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**U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529**



**U.S. Citizenship
and Immigration
Services**

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FILE:

SRC 05 065 50033

Office: TEXAS SERVICE CENTER

Date:

OCT 10 2006

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

✓ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The motion is untimely. The regulation at 8 C.F.R. § 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.5(a)(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Here, the AAO mailed its decision to the petitioner on November 28, 2005. The motion is dated January 13, 2006, 47 days after the AAO's decision. The decision was properly received by the Service Center on January 17, 2006.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion to reopen may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The petitioner has also failed to explain why the two week delay was reasonable or beyond its control.

ORDER: The motion is dismissed.